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KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 9

2011 JUN 21 P 1:27

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
PINNACLE SECURITY, LLC.)
)
Defendants.)

Case No. 110707

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 20th day of June, 2011, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Benjamin Miller-Coleman, Assistant Attorney General. Defendant, Pinnacle Security, LLC appears by and through the undersigned counsel.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the duly elected, qualified, and acting Attorney General for the State of Kansas.
2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act ("KCPA"), K.S.A. 50-623, *et seq.*

3. Defendant Pinnacle Security, LLC (“Pinnacle”) is a limited liability company organized and existing under the laws of Utah.

4. Defendant Pinnacle has a principle place of business at 1290 Sandhill Road, Orem, Utah 84058.

5. All references to Defendant herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

6. Defendant is a supplier within the definition of K.S.A. 50-624(j).

7. Defendant is engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

DEFINITIONS

As used herein, the following terms shall mean:

8. “Clear and Conspicuous” or “Clearly and Conspicuously,” shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, location, and audibility, as compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A clear and conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be present in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

9. “Consumer,” “Client,” or “Customer” shall mean any individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes, as defined in K.S.A 50-624.

10. “Defendant” shall mean Pinnacle Security, LLC; its employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with it.

11. “Represent” means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word “represent,” including without limitation “representation,” “misrepresent,” and “misrepresentation.”

ALLEGATIONS

12. Defendant engaged in the advertising, solicitation and sale of home security products and services.

13. The Plaintiff alleges that Defendant, while offering the aforementioned products and services, may have engaged in deceptive and unconscionable acts and practices in violation of the KCPA, specifically, but not limited to, K.S.A. 50-626, K.S.A. 50-627, and K.S.A. 50-640.

The Plaintiff alleges the following:

- a. Defendant may have, knowingly or with reason to know, made representations that its products and services had characteristics that it did not have, in violation of K.S.A. 50-626(b)(1)(A);
- b. Defendant may have withdrawn more money than the consumer authorized for its products and services, in violation of K.S.A. 50-627(a);
- c. Defendant may have said it would not collect on a consumer account but later attempted collection through a 3rd party debt collector, in violation of K.S.A. 50-627(a);
- d. Defendant may have failed to honor the consumer’s three day right to cancel, in violation of K.S.A. 50-640.

14. Defendant does not admit any of the Plaintiff's allegations, denies that it has violated the KCPA, and agrees to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement.

INJUNCTIVE RELIEF

15. Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph thirteen (13) herein and Defendant agrees that engaging in any such acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

16. Defendant agrees to be permanently enjoined from misrepresenting any material facts regarding its products and services, including but not limited to the price of Defendant's products and services and/or Defendant's affiliation with other home security companies.

17. Defendant agrees that in the course of advertising, offering for sale, and selling its home security products and services, it shall clearly and conspicuously disclose the purpose of the solicitation is to sell products and services provided by Defendant.

18. Defendant shall clearly and conspicuously disclose to Kansas consumers, either in the customer's contract or otherwise, that if the customer is enrolled with or receives home security products or services through another company at the time of Defendant's solicitation, that acceptance of Defendant's offer may result in a cancellation or termination fee by their prior company, and will not terminate the consumer's existing contract with the consumer's current alarm company and if the customer does not cancel their contract the customer may receive a monthly bill from both their old monitoring company and from Pinnacle until the customer cancels their old service.

19. Defendant shall clearly and conspicuously disclose to each Kansas consumer, either in the customer's contract or otherwise, that if the consumer elects to enroll in an automatic payment program with regard to Defendant's products and services, all facts regarding the amount(s) to be charged to the consumer's credit card or withdrawn from the consumer's bank account in addition to the frequency of such charges or withdraws. This disclosure shall be made at the time of Defendant's solicitation and prior to Defendant accepting any payment from the consumer.

20. Defendant agrees to allow any elderly Kansas consumer who is age 70 or older to cancel a door-to-door sale made within the state of Kansas until midnight of thirtieth calendar day after the day on which the consumer signs an agreement or offer to purchase Defendant's products and services. For purposes of this paragraph, a door-to-door sale shall be defined as set forth in K.S.A. 50-640(c)(1).

21. Defendant agrees to clearly and conspicuously disclose in the customer's contract or otherwise, Defendant's refund and cancellation policy to all Kansas consumers at the time of Defendant's solicitation.

22. Defendant agrees to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

23. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

24. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director and employee of management level that is involved in

Kansas operations of the Defendant within ten (10) days of execution of this Consent Judgment or within fifteen (15) days after any person assumes such a position.

INVESTIGATIVE FEES AND CONSUMER RESTITUTION

30. Defendant agrees to pay \$25,000 to the Kansas Attorney General in investigative fees pursuant to K.S.A. 50-632.

31. Payment shall be delivered to the Attorney General at the time of signing this Consent Judgment.

32. Defendant agrees to pay \$3,798.65 to the Kansas Attorney General for consumer restitution, pursuant to K.S.A. 50-632.

33. The restitution shall be paid to the following Kansas consumers, in the amounts set forth below:

- a. Margaret Powell – \$44.99
- b. Terry Burgess – \$379.90
- c. Sheila Stephens – \$284.89
- d. Jerry Van Allen – \$413.93
- e. Kimberley Hines – \$100.00
- f. Kimberly Dixon – \$599.88
- g. James Porter – \$239.97
- h. Roger Mumford – \$44.99

34. Payment shall be made by certified checks payable directly to the named consumers which shall be delivered to the Attorney General at the time of signing this Consent Judgment.

35. Defendant agrees to release all outstanding contractual obligations relating to, and forego collection from, the Kansas consumers identified below in the following amounts:

- a. Margaret Powell – \$1,780.23
- b. Terry Burgess – \$1,443.62
- c. Sheila Stephens – \$1,445.08
- d. Jerry Van Allen – \$1,963.48
- e. Kimberley Hines – \$1,679.58
- f. James Porter – \$1,207.41
- g. Roger Mumford – \$1,889.58
- h. Jimmy and Judy Wilkins - \$1,680.64
- i. Lora Butler – \$1,598.61

36. Defendant agrees that all unpaid restitution, fees and costs shall be non-dischargeable in any filing for bankruptcy, pursuant to the United States Bankruptcy Code, 11 U.S.C 523(a)(2)(A) and (a)(7), due to the nature of the alleged conduct underlying this settlement.

GENERAL PROVISIONS

37. By its execution of this Consent Decree, the Plaintiff releases Defendant from all claims and causes of action that the Plaintiff could have asserted under the Kansas Consumer Protection Act prior to and including the date this Consent Judgment is entered.

38. Notwithstanding any term of this Judgment, specifically reserved and excluded from the terms of paragraph 37 are the following claims and causes of action:

- a. Any criminal liability that the Defendant has or may have to the State of Kansas;

- b. Any claims individual consumers have or may have under the State of Kansas' above cited consumer protection laws against the Defendant.

39. The provisions of this Consent Judgment will be applicable to the Defendant, and every employee, agent or representative of the Defendant.

40. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

41. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

42. Except as otherwise provided for in this Agreement, including the Release contained in paragraph 37, compliance with this Consent Judgment does not relieve the Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

43. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of the Defendant nor shall the Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an

approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

44. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendant. Defendant further represents that they have had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendant immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant and in favor of Plaintiff in the amount of \$28,798.65 in investigative fees and consumer restitution, and \$14,688.23 for the release of contractual customer obligations.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant pay all costs associated with this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.


DISTRICT COURT JUDGE
(signed for Div. 9)

Prepared and approved by:

PLAINTIFF:



Derek Schmidt, #17781
Attorney General
Office of Kansas Attorney General, Derek Schmidt
120 Southwest 10th Ave., 2nd Floor
Topeka, Kansas 66612
(785) 296-2215



Ben Miller-Coleman KS #24626
Assistant Attorney General
Office of Kansas Attorney General
120 Southwest 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751
ben.coleman@ksag.org
Attorney for Plaintiff

DEFENDANT:

Kelly Walker, CEO of Pinnacle Security, LLC

IT IS SO ORDERED.

DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:

Derek Schmidt, #17781
Attorney General
Office of Kansas Attorney General, Derek Schmidt
120 Southwest 10th Ave., 2nd Floor
Topeka, Kansas 66612
(785) 296-2215

Ben Miller-Coleman KS #24626
Assistant Attorney General
Office of Kansas Attorney General
120 Southwest 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751
ben.coleman@ksag.org
Attorney for Plaintiff

DEFENDANT:



Kelly Walker, CEO of Pinnacle Security, LLC



Alan E. Streit, #19876
LARSON & BLUMREICH, CHARTERED
5601 SW Barrington Court South
PO Box 4306
Topeka, Kansas 66604
(785) 273-7722
Fax: (785) 273-8560
E-Mail: alan@lbc-law.com
Local Counsel for Pinnacle Security, LLC